

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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MICHAEL J. BRADLEY

In the Matter of the Application of Great River
Energy for a Certificate of Need for the
Cambridge Peaking Plant

ISSUE DATE: November 23, 2005

DOCKET NO. ET-2/CN-05-347

ORDER ADOPTING ALJ'S REPORT, AS
AMENDED, AND GRANTING A
CERTIFICATE OF NEED

PROCEDURAL HISTORY

On February 28, 2005, Great River Energy (GRE or the Applicant) filed a Certificate of Need application for construction of a 170-megawatt, gas-fired combustion turbine at the site of its existing Cambridge Peaking Plant in Cambridge Township, Isanti County, Minnesota. The proposed facility is a large energy facility, as defined in Minn. Stat. § 216B.2421, subd. 2 (1).

On March 29, June 7, and June 24, 2005, GRE submitted supplementary material and/or revisions to pages of the application.

On April 8, 2005, the Commission issued its NOTICE AND ORDER FOR HEARING. In that Order, the Commission appointed Administrative Law Judge (ALJ) Kathleen D. Sheehy to conduct contested case proceedings.

On October 4, 2005, ALJ Sheehy filed Findings of Fact, Conclusions of Law and Recommendation (ALJ's Report). The ALJ's Report covered both the need process and the siting process. The ALJ's Report is incorporated by reference.

On October 18, 2005, Mankato Energy Center (MEC) filed its Exceptions to the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge. On the same day, GRE filed its Technical Corrections to ALJ Report.

On November 10, 2005, the Commission held oral argument and the record closed under Minn. Stat. 14.61.

FINDINGS AND CONCLUSIONS

I. The ALJ's Report

The ALJ's Report consisted of 139 findings of fact, 15 conclusions, and two recommendations, one of which was to grant GRE's application for its requested large electric power generating plant without condition.

The ALJ's Report covered the siting process as well as the need process. In this Order, the Commission addresses the Certificate of Need process and will be issuing a separate Order in Docket No. ET-2/TR-05-315 regarding the siting process.

Regarding the Certificate of Need requested by GRE, the ALJ provided detailed findings and conclusions establishing that the Company's application satisfies the requirements for a Certificate of Need set forth in Minn. Stat. § 216B.243 and Minn. Rules, Chapter 7849. The ALJ recommended that the Commission grant the Company a Certificate of Need for a 170 MW simple-cycle combustion turbine large electric power generating plant without condition.

II. GRE's Recommended Technical Corrections

GRE did not file exceptions to the ALJ's Report but did file a list of what it characterized as technical corrections. The Company recommended that

- Finding 2 should include the word "capacity" before the word "factor" in the last sentence.
- Finding 8 should be clarified to reflect that notice was provided both to affected landowners and governmental units;
- Findings 39 and 40 should refer to a 2003 IRP update, not a 2004 IRP update.
- Finding 98 should be corrected to indicate that there would be "less than 1,000 feet of transmission line from the transformers to the existing Cambridge Substation."
- Findings 98, 105, and 125 should be corrected to indicate that the storm retention pond would be located at the northeast end of the site.

III. The Department's Recommendation

The Department filed no exceptions to the ALJ's Report. According to the Department, the record establishes that the pertinent statutes and rules (i.e., Minn. Rules, part 7849.0120, items A to D) have been satisfied and that a Certificate of Need therefore should be issued to the applicant. As part of its analysis, the Department concluded that no party has demonstrated the existence of a more reasonable and prudent alternative.

IV. Joint Recommendation of MEC and GRE

Initially, MEC stated that, in light of the evidence offered both by MEC and the Department, GRE has not met its burden of proof. MEC also argued that the issue of alternatives does not arise until GRE shows "the need for 170 megawatts of peaking power by summer 2007."

In addition, MEC filed exceptions arguing that Findings 38-40, 42 and 45 and related findings and conclusions are inaccurate or incomplete in stating that a peaking resource is best suited for meeting GRE's need and that Findings 83-86 and 88 improperly suggest that MEC or Calpine is financially unreliable.

At the November 10, 2005 hearing, MEC modified its position and jointly recommended with GRE that the Commission adopt most of the ALJ's Report but not Paragraphs 83 to 87 of the ALJ's Report and the first sentence of Paragraph 88. The parties also recommended that the Commission indicate in its Order that the Commission is making no definitive conclusion on the credit worthiness or financial reliability of either MEC or Calpine.

V. Commission Analysis and Action

A. Compliance With the Environmental Quality Board Scoping Decision

Minn. Rules, Part 4410.7050, subd. 2 requires the Commission at the time it makes a final decision on a Certificate of Need application to determine whether the **environmental report** and the record created in the matter address the issues identified by the EQB chair in his order (scoping decision) issued pursuant to Minn. Rules, Part 4410.7030, subpart 7. It is unclear whether this requirement applies to an **environmental assessment** to be prepared in this joint need and siting case. The Commission need not reach a conclusion on that point because having reviewed the Environmental Assessment provided in this case, the Commission finds that it and the record as a whole do in fact adequately address the Certificate of Need issues identified in the EQB chair's scoping decision.

B. Certificate of Need

The ALJ recommended that the Commission grant a Certificate of Need to GRE for the proposed Cambridge peaking plant. In support of that recommendation, the ALJ examined each of the four criteria listed in Minn. Rules, Part 7849.0120:

- The first criterion is that the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, taking into account five factors. The ALJ addressed this criterion in Findings 37 through 52. Her conclusion that the first criterion is satisfied is stated in Conclusion 8 on page 30.

- The second criterion is that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record, considering four factors. The ALJ addressed this criterion in Findings 53 through 88. Her conclusion that the second criterion is satisfied is stated in Conclusion 9 on page 30.
- The third criterion is that by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health, considering four factors. The ALJ addressed this criterion in Findings 89 through 96. Her conclusion that the third criterion is satisfied is stated in Conclusion 10 on page 31.
- The fourth criterion is that the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments. The ALJ addressed this criterion in Finding 97. Her conclusion that the fourth criterion is satisfied is stated in Conclusion 11 on page 31.
- Additional statutory factors are addressed in Conclusions 12 and 13 on page 31.

The Commission finds that the ALJ's Report is well-founded and thorough and will adopt it as submitted except for the Paragraphs identified by MEC and the GRE and the technical corrections identified by GRE.

Regarding the Paragraphs of the ALJ's Report that the Commission will not be adopting, the Commission finds that the ALJ's Report provides sound and persuasive support for its ultimate recommendation to grant GRE's application for a Certificate of Need without reference to the identified Paragraphs. Since the identified Paragraphs relate to disputed matters that the Commission need not resolve in order to reach the merits of GRE's application, the Commission will accept the parties' recommendation and not do so.

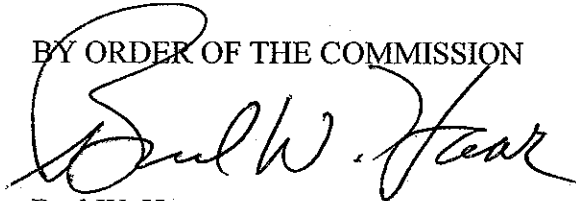
As to the technical corrections identified by GRE, the Commission notes that they do not substantively alter the ALJ's Report. The Commission finds the technical corrections appropriate and will incorporate them.

In sum, the Commission finds that the proposed gas-fired peaking facility scheduled to be completed by the summer season of 2007 would be an appropriate type of facility to meet the need identified by GRE and will issue a Certificate of Need for the construction of the large electric energy facility proposed.

ORDER

1. The Commission accepts the Environmental Assessment provided in this case as adequately addressing the Certificate of Need issues identified in the Environmental Quality Board chair's scoping decision.
2. The Commission adopts the Administrative Law Judge's Report, amended as follows:
 - a. the technical corrections identified by GRE and listed above in this Order in Section II are incorporated into the report; and
 - b. Paragraphs 83 to 87 and the first sentence of Paragraph 88 are not adopted; no definitive conclusion on the credit worthiness or financial reliability of either MEC or Calpine is made.
3. The Commission hereby grants Great River Energy a Certificate of Need for the construction of the large electric energy facility as proposed.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

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